

FILED
District Court

003 - 6 2005

For The Northern Mariana Islands
By _____
(Deputy Clerk)

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UNITED STATES DISTRICT COURT
NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,

Plaintiff,

v.

NORMAN DESEBEL KAPILEO,

Defendant.

Criminal Case No. 03-00001

**GOVERNMENT'S MEMORANDUM IN
SUPPORT OF MOTION TO REDUCE
SENTENCE PURSUANT TO FED R.
CRIM P. 35**

Hearing: Re-Sentencing
Date: November 3, 2005
Time: 8:30 a.m.

The Government presently intends to move the Court at the November 3, 2005, hearing for a reduction in sentence pursuant to Fed. R. Crim P. 35(b)(2). Based upon the substantial assistance provided by the defendant, a modest reduction in the defendant's remaining sentence is warranted.

Background

Defendant Norman Desebel Kapileo was arrested on February 12, 2003 on the basis of an indictment charging him with conspiracy to commit Hobbs Act Robbery and Hobbs Act Robbery, in violation of Title 18, United States Code, Sections 1951 and 2; and using and carrying a firearm during a crime of violence, in violation of Title 18, United States Code, Sections 924(c)(1)(A)(iii) and 2, in connection with the City Trust Bank robbery on April 12,

2002. Kapileo pleaded guilty to the conspiracy and firearm charge on April 3, 2003, pursuant to a “non-cooperation” plea agreement with the Government. On July 8, 2003, the Court sentenced Kapileo to 190 months’ imprisonment. Kapileo has been in custody since February 12, 2003.

As the Court may recall from the trial in United States v. Vann Le, Crim. No. 03-00001, Kapileo testified on behalf of the Government. Kapileo had no agreement with the Government regarding this testimony. In fact, Kapileo had not known why he was brought back to the CNMI and initially expressed reluctance to cooperate for fear of being labeled a “snitch” among the other inmates. In the end, Kapileo agreed to be debriefed and, after consultation with his attorney, voluntarily testified in the Le trial without any promises from the Government.

Rule 35(b)(2)(B)

Entitled “Later Motion,” this rule provides in relevant part as follows:

Upon the government’s motion made more than one year after sentencing, the court may reduce a sentence if the defendant’s substantial assistance involved: . . .

(B) information provided by the defendant to the government within one year of sentencing, but which did not become useful to the government until more than one year after sentencing

Fed. R. Crim. P. 35(b)(2).

Kapileo testified under oath at his plea hearing that he conspired with Le to commit the City Trust Bank robbery. At the time, Le was not in Government custody and believed to be at large in Asia. After Kapileo’s sentencing, the Government located Le in Vietnam and extradicted him to Saipan to stand trial. Kapileo testified consistent with his statements under oath at the trial, which took place more than one year after sentencing.

Extent of Reduction

The fact that the Le trial resulted in an acquittal should not prevent the Court from granting this motion. Kapileo will suffer any adverse consequences to his testifying on behalf of the Government without regard to the trial’s outcome.

In the Government’s view, Kapileo was a significant violator who discharged the weapon in the course of the robbery. In addition, Kapileo has a very serious criminal history. Under the

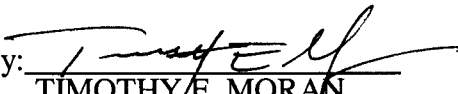
1 circumstances, should the Court grant the motion, the Government believes that a modest
2 reduction of **12 months** from the remaining sentence is warranted.

3 Dated: October 6, 2005
4 Saipan, CNMI

5 Respectfully submitted,

6 LEONARDO M. RAPADAS

7 United States Attorney for the
8 Districts of Guam and NMI

9 By: 
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